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FACT SHEET

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Vexatious Litigants

The Judicial Council's duty is to maintain a vexatious litigant list under Code of Civil Procedure section 391.7. It has delegated the responsibility of maintaining the list to its staff agency, the Administrative Office of the Courts.

What Is a Vexatious Litigant?

Under Code of Civil Procedure section 391(b), a vexatious litigant is a person who does any of the following:

- In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.
- After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.
- In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.
- Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

Duties

The Judicial Council maintains a record of vexatious litigants subject to such prefiling orders and annually disseminates a list of such persons to the court clerks. (Code Civ. Proc., § 391.7(f).)

Legal Requirements

Under section 391.7(f), the clerk of the court provides to the Judicial Council a copy of any statewide vexatious litigant prefiling orders.

Under section 391.7, in addition to other relief, the court may, on its own motion or the motion of any party, enter a prefiling order that prohibits a vexatious litigant from filing any new litigation in California in pro per without first obtaining permission from the presiding justice or presiding judge of the court where the filing is proposed. A vexatious litigant who disobeys such a prefiling order may be punished for contempt of court. (Code Civ. Proc., § 391.7(a).)

The presiding justice or presiding judge should permit the filing of such litigation only if it appears that the litigation has merit and is not being filed for the purpose of harassment or delay. The presiding justice or presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants, as provided in Code of Civil Procedure section 391.3. (Code Civ. Proc., § 391.7(b).)

The clerk should not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding justice or presiding judge permitting the filing. (Code Civ. Proc., § 391.7(c).)

Under section 391.7 (e), the presiding justice or presiding judge of a court may designate a justice or judge of the same court to act on his or her behalf in exercising the authority and responsibilities provided under subdivisions (a) to (c), inclusive.

Under section 391.8 (a), a vexatious litigant subject to a prefiling order under Section 391.7 may file an application to vacate the prefiling order and remove his or her name from the Judicial Council's list of vexatious litigants subject to prefiling orders. The application shall be filed in the court that entered the prefiling order, either in the action in which the prefiling order was entered or in conjunction with a request to the presiding justice or presiding judge to file new litigation under Section 391.7. The application shall be made before the justice or judge who entered the order, if that justice or judge is available. If that justice or judge who entered the order is not

available, the application shall be made before the presiding justice or presiding judge, or his or her designee.

Under section 391.8 (b), a vexatious litigant whose application under subdivision (a) was denied shall not be permitted to file another application on or before 12 months has elapsed after the date of the denial of the previous application.

Under section 391.8 (c), a court may vacate a prefiling order and order removal of a vexatious litigant's name from the Judicial Council's list of vexatious litigants subject to prefiling orders upon a showing of a material change in the facts upon which the order was granted and that the ends of justice would be served by vacating the order.

Other Requirements and Considerations

The Judicial Council's annual dissemination of the vexatious litigant list to court clerks is required. To remove a name from the vexatious litigant list, the council must receive an order directly from the issuing court vacating the prefiling order.

List

The statewide vexatious litigant list is updated monthly and may be found on the California Courts Web site at www.courts.ca.gov/12272.htm

Forms

MC-700, Prefiling Order—Vexatious Litigant

This mandatory Judicial Council form is to be used by the courts or a party when declaring a person or organization a vexatious litigant requiring a prefiling order. The MC-700 can be found on the California Courts Web site at www.courts.ca.gov/documents/mc700.pdf

MC-701, Request and Order to File New Litigation by Vexatious Litigant

This optional Judicial Council form may be used by an individual who has been determined to be a vexatious litigant and who must obtain prior court approval to file any **new** litigation in which he or she is not represented by an attorney. Filing new litigation means (1) commencing any civil action or proceeding, or (2) filing any petition, application, or motion (except a discovery motion) under the Family or Probate Code in the courts of California. The MC-701 can be found on the California Courts Web site at www.courts.ca.gov/documents/mc701.pdf